

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

JOYCE ROLAND)	
Claimant)	
VS.)	
)	Docket No. 137,886
DELUXE SERVICE SYSTEMS, INC.)	
Respondent)	
AND)	
)	
CNA INSURANCE COMPANY)	
Insurance Carrier)	

ORDER

Claimant appeals from a post-award Order entered by Administrative Law Judge Robert H. Foerschler on May 19, 1997. The Order denied claimant's application for additional medical care. The Appeals Board heard oral argument December 16, 1997.

APPEARANCES

Claimant appeared by her attorney, Dennis L. Horner of Kansas City, Kansas. Respondent and its insurance carrier appeared by their attorney, Wade A. Dorothy of Lenexa, Kansas.

RECORD AND STIPULATIONS

The Appeals Board has reviewed and considered the record identified in the original Award in this case, an Award entered on September 13, 1995. The Appeals Board has also considered subsequent pleadings and documents filed of record in this case in connection with claimant's application for additional medical treatment. No hearing or additional testimony was taken in connection with that application. The Appeals Board has also adopted the stipulations identified in the original Award.

ISSUES

Claimant seeks medical treatment for temporomandibular joint dysfunction syndrome (TMJ). The Administrative Law Judge concluded, in an Order dated May 19, 1997, that the original Award of September 13, 1995, did not include any compensation for TMJ. On that

basis, the Administrative Law Judge denied claimant's application for additional medical treatment. Claimant contends the original Award did include compensation for TMJ and did allow for future medical treatment. Claimant contends the Administrative Law Judge erred in denying claimant's application.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Appeals Board concludes, based on the findings of fact and conclusions of law stated below, the Order should be affirmed.

Findings of Fact

1. Claimant was injured on February 14, 1989, when she slipped, fell backward, and hit her head and back.
2. Claimant was treated by Louis Hasbrouck, D.O., on a referral from Jack L. Haden, D.D.S., for complaints of pain in the neck, temples, and lumbosacral areas. Claimant was later treated or examined by a variety of medical specialists for neck, head, and low-back complaints. Dr. Haden and K. Dean Reeves, M.D., both provided authorized treatment for TMJ.
3. From the injuries resulting from the February 14, 1989, slip and fall, Judge Foerschler found claimant sustained a 25 percent permanent partial impairment of function to the body as a whole. An Award of benefits was entered in claimant's favor on September 13, 1995. The Award does not mention TMJ. The Award grants future medical benefits for "her multiple problems." (p.7)
4. Reports from Dr. Haden were introduced at the preliminary hearing of July 16, 1992, but were not otherwise offered or introduced into the evidentiary record of this case. At the regular hearing of October 18, 1994, the parties agreed, and the ALJ stated, that only the testimony from the preliminary hearing would be considered part of the record, not the medical reports.
5. The record in this case contains no medical opinion that claimant's TMJ resulted from her compensable accident of February 14, 1989. Dale E. Darnell, M.D., and Dr. Reeves express no opinion. C. Keith Whittaker, M.D., a neurological surgeon, testified that, in his opinion, claimant does not have TMJ. Robert D. Rondinelli, M.D., the court-appointed independent medical examiner, testified that association of TMJ with the accident is questionable. Dr. Haden's reports are not in evidence.

Conclusions of Law

1. Claimant's current application for medical treatment was made by a pleading designated as "Claimant's Application for Additional Medical Care and Treatment and Application for Attorney's Fees." The Order entered on that application will, therefore, be

treated, for purposes of review, as a final order, not a preliminary hearing order. Attorney fees were not made an issue on appeal.

2. In the order of May 19, 1997, denying claimant's request for treatment for TMJ, Administrative Law Judge Robert H. Foerschler found that the Award entered in this case on September 13, 1995, did not award compensation for TMJ. Based on this finding by the Administrative Law Judge who entered the Award, the Appeals Board concludes the Award of September 13, 1995, did not find claimant's TMJ, if any, to be compensable.

3. The Appeals Board finds, from review of the evidence presented in this case, claimant has not met her burden of proving by a preponderance of the credible evidence that her TMJ, if any, resulted from her accident of February 14, 1989.

4. Claimant has not established by a preponderance of the credible evidence that she suffers from a compensable TMJ condition which resulted from an accidental injury arising out of and in the course of her employment.

5. Claimant is not entitled to medical treatment for TMJ at respondent's expense.

AWARD

WHEREFORE, the Appeals Board finds that the Order by Administrative Law Judge Robert H. Foerschler dated May 19, 1997, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of January 1998.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Dennis L. Horner, Kansas City, KS
Wade A. Dorothy, Lenexa, KS
Robert H. Foerschler, Administrative Law Judge
Philip S. Harness, Director